

1 Anthony J. Dain (Bar No. 98947)
email: anthony.dain@procopio.com
2 Frederick K. Taylor (Bar No. 159838)
email: fred.taylor@procopio.com
3 Dave Deonarine (Bar No. 243733)
email: dave.deonarine@procopio.com
4 J. Christopher Jaczko (Bar No. 149317)
email: chris.jaczko@procopio.com
5 Raymond K. Chan (Bar No. 220534)
email: raymond.chan@procopio.com

6 PROCOPIO, CORY, HARGREAVES
7 & SAVITCH LLP
12544 High Bluff Drive, Suite 300
8 San Diego, California 92130
Telephone: 858.720.6300
9 Facsimile: 619.235.0398

10 Attorneys for Kaneka Corporation

11 UNITED STATES DISTRICT COURT
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA
13 SOUTHERN DIVISION

14 KANEKA CORPORATION,

15 Plaintiff,

16 v.

17 SKC KOLON PI, INC., and SKC, INC.,

18 Defendants.
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Case No. 2:11-CV-03397-JGB-RZ

**KANEKA'S OPPOSITION TO
DEFENDANTS AND
COUNTERCLAIMANTS' MOTION
TO STAY ENTRY OF JUDGMENT
PENDING DISPOSITION OF
POSTTRIAL MOTIONS UNDER
RULE 62(B)**

Date: July 10, 2017
Time: 9:00 a.m.
Dept: Courtroom 1
3470 Twelfth Street
Riverside, CA 92501
Judge: Judge Jesus G. Bernal

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1 **I. INTRODUCTION**

2 SKPI's motion to stay enforcement of the judgment without a bond must be
3 denied because SKPI failed to show how its unsubstantiated, and presumably
4 foreign-based, assets provide Kaneka any security of payment the nearly \$13.5
5 million judgment. Under Federal Rule of Procedure 62(b) SKPI is required to
6 provide such security to obtain a stay of enforcement while the court considers
7 certain post-trial motions. While Kaneka is not opposed to a stay of enforcement
8 generally, it is strongly opposed to a stay without proper security as required under
9 Rule 62(b).

10 The federal courts, including this District, have been guided by a four-factor
11 test to evaluate whether a stay without a bond is appropriate. Generally, the courts
12 will look at: (1) whether the stay applicant has made a strong showing of likelihood
13 to succeed on the merits; (2) whether the applicant will be irreparably injured absent
14 a stay; (3) whether issuance of the stay will substantially injure the other parties
15 interested in the proceeding; and (4) where the public interest lies. Here, SKPI only
16 asserts that it is an unnecessary waste of money to require it to bond because it has
17 assets in some unknown form, and in some unknown location. SKPI never asserts
18 that paying for a bond would result in irreparable injury to itself, never asserts that it
19 can show a strong likelihood of success on the merits and never asserts that it would
20 be in the public interest to allow it not to post a bond. Most importantly, SKPI fails
21 to demonstrate to this Court that Kaneka would be just as secure without a bond as it
22 would be with a bond. Kaneka is entitled to maintain the status quo of its judgment
23 by obtaining real security of payment by SKPI. SKPI's flimsy and unsubstantiated
24 consolidated statements do not provide any proof that there are assets that Kaneka
25 could readily attach, especially here in the United States, to satisfy this substantial
26 judgment. Accordingly, SKPI's motion must be denied.

1 **II. BACKGROUND**

2 On May 25, 2017, this Court entered a final judgment of \$13,488,65.10
3 against SKPI. The automatic 14-day stay of execution on the judgment expired on
4 June 8, 2017. SKPI now moves the Court to stay enforcement of the judgment
5 without any bond or security while it files more post-trial motions.

6 SKPI has already filed a motion for judgment as a matter of law and for a new
7 trial on induced infringement on December 17, 2015. (Dkt. No. 692) On November
8 30, 2015, SKPI filed a post-trial brief regarding court resolution of implied license
9 and laches. (Dkt. No. 654) On August 2, 2016, this Court issued an order denying
10 the motions for judgment as a matter of law and new trial, and finding that the
11 implied license and laches defenses were not a bar to Kaneka's claims. (Dkt. No.
12 730)

13 **III. ANALYSIS**

14 **A. SKPI Cannot Be Granted a Stay Without a Bond Because its** 15 **Unsubstantiated Claim of Assets Does Not Provide Adequate** 16 **Security to Kaneka that It Could Enforce Its Judgment in the** 17 **United States.**

18 SKPI's request for a stay without posting bond fails to satisfy the requirements
19 of Federal Rule of Civil Procedure 62(b) and, accordingly, should be denied. Rule
20 62(b) reads in relevant part: *On appropriate terms for the opposing party's security,*
21 *the court may stay the execution of a judgment -- or any proceedings to enforce it --*
22 *pending disposition of any of the following motions:*

- 23 (1) under Rule 50, for judgment as a matter of law;
- 24 (2) under Rule 52(b), to amend the findings or for additional findings;
- 25 (3) under Rule 59, for a new trial or to alter or amend a judgment; or
- 26 (4) under Rule 60, for relief from a judgment or order.

27
28 Fed. R. Civ. P. 62(b) (emphasis added).

1 The United States Supreme Court has made clear that “[t]he district court may
 2 only stay execution of the judgment pending the disposition of certain post-trial
 3 motions or appeal if the court provides for the security of the judgment creditor”
 4 *Peacock v. Thomas*, 516 U.S. 349, 359 n.8 (1996). The Supreme Court further
 5 explained that, “[i]n the event a stay is entered pending appeal, *the Rules require the*
 6 *district court to ensure that the judgment creditor’s position is secured:*” *Id.* at 359
 7 (emphasis added). To fulfill the requirement of Rule 62(b) that a stay may issue only
 8 upon “appropriate terms for the opposing party’s security,” SKPI, a foreign
 9 corporation with no assets in the United States, thus must post bond as security for
 10 the judgment. *See* Fed. R. Civ. P. 62(b); *see also In re Apollo Group, Inc. Secs.*
 11 *Litig.*, 2008 WL 410625, at *1 (D. Ariz. 2008) (a stay pending disposition of certain
 12 post-trial motions must be granted on appropriate terms for security, and unsecured
 13 stays are disfavored under the Rule).

14 **B. SKPI’s Motion Fails to Satisfy Any Factor for a Stay Under Rule**
 15 **62(b) on the Merits.**

16 SKPI’s motion does not come close to making the necessary showing for stay
 17 of a judgment under Rule 62(b). In considering a stay under Rule 62(b), courts
 18 typically consider four factors: “(1) whether the stay applicant has made a strong
 19 showing that he [or she] is likely to succeed on the merits; (2) whether the applicant
 20 will be irreparably injured absent a stay; (3) whether issuance of the stay will
 21 substantially injure the other parties interested in the proceeding; and (4) where the
 22 public interest lies.” *Standard Havens Prods., Inc. v. Gencor Indus., Inc.*, 897 F.2d
 23 511, 512 (Fed. Cir. 1990) (listing four factors considered by courts in assessing
 24 motions to stay judgments); *ePLUS, Inc. v. Lawson Software, Inc.*, 2011 WL
 25 2119413, at *2 (E.D. Va. May 24, 2011) (explaining *Standard Havens* factors apply
 26 to stays under Rule 62(b) and (c)); *Honeywell*, 397 F. Supp. 2d at 547-48; *SEC v.*
 27 *Retail Pro, Inc.*, 2011 WL 3515910, *2, 4 (S.D. Cal. Aug. 11, 2011) (applying Rule
 28 62(b) four-factor test and denying stay). SKPI has not and cannot show that the four

1 factors warrant staying enforcement of any judgment in this case. Further, SKPI
 2 cannot now attempt to raise new facts or argument regarding these four factors in its
 3 reply brief. *Ulloa v. Colvin*, 2015 WL 9455557, at *6 n.9 (C.D. Cal. 2015).

4 **1. SKPI Failed to Demonstrate Any Likelihood of Success in Its**
 5 **Anticipated Motions.**

6 SKPI has not made any showing that they are likely to succeed on the merits
 7 of its post-trial motions, let alone the “strong showing” that is typically required.
 8 *Standard Havens*, 897 F.2d at 512. In fact, SKPI does not provide the Court with
 9 any information on what issues it intends to raise or the likelihood of succeeding on
 10 those issues. Therefore, SKPI fails in this initial factor.

11 However, SKPI has already filed post-trial motions for judgment as a matter
 12 of law, or in the alternative, for a new trial on December 17, 2015. (Dkt. No. 692)
 13 In a published opinion, this Court rejected each of SKPI’s arguments for its
 14 entitlement to a judgment as a matter of law or new trial. *Kaneka Corporation v.*
 15 *SKC Kolon PI, Inc.*, 198 F.Supp.3d 1089 (C.D. Cal. 2016). In the same opinion, this
 16 Court rejected SKPI’s arguments regarding implied license and laches. *Id.* While
 17 SKPI will presumably raise new issues, it was not successful in its immediate efforts
 18 after the trial. In any case, it was SKPI’s burden to show that it had a likelihood of
 19 success and it provided the Court with nothing.

20 Accordingly, this factor strongly weighs in favor of denying SKPI’s motion.

21 **2. SKPI Will Not Be Irreparably Harmed By Having to Post a**
 22 **Bond Pending the Outcome of the Post-trial Motions.**

23 In circumstances such as this case, “[w]here likelihood of success ‘is less
 24 forceful . . . a movant would have to make a **stronger showing** of irreparable harm
 25 in order to tip the balance of equity in his favor.’” *Standard Havens*, 897 F.2d at 513
 26 (emphasis added). Here, SKPI has not made any showing of irreparable harm, and
 27 certainly not a strong one. In fact, SKPI’s entire “showing” consists of the assertion
 28

1 that it would be a waste of money to require it to post a bond because it purportedly
2 has some assets that it could use to satisfy a judgment.

3 However, SKPI has not even asserted that it would be irreparably harmed by
4 paying for a bond. Indeed, SKPI can easily afford a payment for a bond considering
5 that it has substantial cash and equivalents, according to its unsubstantiated
6 consolidated statements. (Dkt. No. 743-5, at 8)¹ Even if SKPI's declaration and
7 exhibit are sufficient to show some small financial hardship (which it has actually
8 not asserted) in instances where a party is "likely" to suffer grave consequences such
9 as layoffs or insolvency, the determination of whether to stay execution of a
10 judgment is a close question that revolves around the combination of likelihood of
11 success on the merits and potential irreparable harm to the movant. *See Standard*
12 *Havens*, 897 F.2d at 515-16. For the reasons discussed above, SKPI has not made
13 any showing, let alone a "strong showing," of likelihood of success or a "strong
14 showing" or irreparable harm. Consequently, SKPI has not met its burden.

15 This factor therefore strongly favors denial of SKPI's motion.

16 **3. A Stay Without a Bond Would Injure Kaneka and Does Not**
17 **Serve the Public in Any Manner.**

18 SKPI did not address the remaining equitable factors, including harm to
19 Kaneka from a stay without a bond and the public interest.

20 First, Kaneka would certainly be harmed if there is a stay of enforcement with
21 no bond. It is a real concern that it would be difficult for Kaneka to collect a
22 judgment against a foreign entity with no known assets in the United States. Far

23 ¹ Kaneka relies upon Exhibit A to Mr. Oh's Declaration for this argument to the
24 extent that it shows that SKPI is easily capable of paying for a bond. However, that
25 exhibit fails miserably in showing that SKPI has assets that are available for Kaneka
26 to execute upon. Again, there is no indication of what the assets are, where they are
27 located, and whether Kaneka, as a judgment creditor, could have priority over the
28 other creditors of SKPI. Indeed, as shown, SKPI has considerably less cash
(55,454M KRW) than it has total liabilities (96,034M KRW) in the first quarter of
2017. (Dkt. No 743-5, at 8)

1 from supporting a stay, this fact favors allowing Kaneka to immediately begin the
2 collection process if there is no security--staying the process would only further
3 increase the risk to Kaneka of not collecting on the judgment. The “[p]ossible
4 inability to satisfy a judgment is good reason to deny a stay or require a bond.” *SEC*
5 *v. Black*, 2012 WL 5429908, at *2 (N.D. Ill. Nov. 6, 2012) (applying Rule 62(b)
6 four-factor “standard” and denying stay) (citations omitted). The fact that SKPI is a
7 foreign corporation with no known assets in the United States is also a factor
8 militating toward harm against Kaneka. See, *Grand Ent. Group, Ltd. v. Star Media*
9 *Sales, Inc.*, 1992 WL 114953, at *2–3 (E.D. Pa. 1992) (Where waiver of a
10 supersedeas bond may be particularly inappropriate defendant does not appear to
11 have assets in this country that could be used to satisfy the judgment against it.)

12 Moreover, the public interest weighs against granting a stay. The Supreme
13 Court has made clear that the paramount public interest is the security of the
14 judgment creditor, not the defendant seeking a stay: “[t]he district court may only
15 stay execution of the judgment pending the disposition of certain post-trial motions
16 or appeal if the court provides for the security of the judgment creditor.” *Peacock v.*
17 *Thomas*, 516 U.S. 349, 359 n.8 (1996). For the reasons discussed above, it would be
18 in Kaneka’s interest not to stay the execution of the money judgment because SKPI
19 has not identified any assets that Kaneka could collect upon in the United States.
20 SKPI’s vague assertion that it has “assets” without specifying how Kaneka would be
21 protected by those assets raises concerns about the ability of Kaneka to collect.
22 SKPI has not articulated a single reason why the public interest would favor granting
23 a stay.

24 Accordingly, both of these factors favor denial of SKPI’s motion.

25 **4. SKPI’s Unsubstantiated Claim of Assets in a Foreign Country**
26 **Does not Provide Adequate Security for Kaneka to Collect Its**
27 **Judgment in the United States.**
28

SKPI's motion ultimately fails because it provides little in regards to "adequate terms for [Kaneka's] security." Fed. R. Civ. 62(b). "The purpose of security under Rule 62(b) is to preserve the status quo pending disposition of post-trial motions." *In re Apollo Grp. Inc. Securities Litig.*, 2008 WL 410625, at *2 (citations removed). Accordingly, "courts typically require security in the full amount of the judgment." *Id.*; see also, e.g., *AIA Eng'g Ltd. v. Magotteaux Int'l S/A*, 2012 WL 3745625, at *2 (M.D. Tenn. Aug. 28, 2012) (granting stay of execution of judgment under Rule 62(b) on condition of posting bond in amount of judgment, proposed value of prejudgment interest, attorneys' fees, and costs); *Int'l Wood Processors v. Power Dry, Inc.*, 102 F.R.D. 212, 215-16 (D.S.C. 1984) (requiring bond in amount of full judgment plus interest as condition to granting stay under Rule 62(b)).

Instead of proposing to post a bond in the amount of the \$13.4 million judgment, SKPI offers that it has sufficient assets, of unspecified type and location, to provide security to Kaneka. (Dkt. No. 743-4 at 3, 743-5 at 8) SKPI does not explain how Kaneka would be able to execute on these foreign assets. *Id.* In fact, SKPI does not even explain what its purported assets are. *Id.* Lastly, SKPI does nothing to inform this Court of the collectability of these purported assets and how Kaneka's interests would be protected.

SKPI has not met its burden of showing why the Court should depart from the presumption in favor of a bond covering the full judgment. For example, before replacing a bond with a vague statement of foreign assets, under Rule 62(b), SKPI is required to show that (1) "posting a full bond is impossible or impractical," *American Family Mut. Ins. Co. v. Miell*, 2008 WL 746604, at *2 (N.D. Iowa Mar. 19, 2008). SKPI not only failed to make a showing under either of these factors--it did not even address them.

SKPI fails to objectively demonstrate that posting a full bond is impossible or impractical. SKPI's declaration from Mr. Jangsuk Oh does not mention any attempt to obtain a bond, line of credit, or other form of security. (Dkt. No. 743-4) The

1 declaration does not identify any assets that SKPI has in the United States which
2 Kaneka could attach to protect its judgment. *Id.* In fact, at trial, SKPI extensively
3 argued that it did even have knowledge of whether its films entered the United States
4 through mobile phones.

5 Accordingly, SKPI has failed to show that Kaneka would be adequately
6 protected with any reasonable security. This factor likewise weighs heavily against
7 SKPI.

8 **IV. CONCLUSION**

9 Based on the foregoing, Kaneka respectfully requests that the Court deny
10 SKPI's motion to stay enforcement of the judgment without posting a bond as
11 security for Kaneka.

12 DATED: June 19, 2017

PROCOPIO, CORY, HARGREAVES &
SAVITCH LLP

13
14
15 By: /s/ Frederick K. Taylor

16 Anthony J. Dain
17 Frederick K. Taylor
18 Dave Deonarine
19 J. Christopher Jaczko
20 Raymond K. Chan

21 Attorneys for
22 Kaneka Corporation
23
24
25
26
27
28